

ELZIE W. MCADAMS, et al.

Plaintiffs,

V.

FORD MOTOR COMPANY, et al.,

Defendants.

Case No. 18-CV-07485-LHK

ORDER GRANTING PLAINTIFFS' MOTION TO REMAND

Re: Dkt. No. 11

Plaintiffs Elzie W. McAdams and Phyllis McAdams (collectively, “Plaintiffs”) bring this lawsuit against Defendants Ford Motor Company (“Ford”) and Lithia Ford Lincoln of Fresno (“Lithia”) (collectively, “Defendants”) for claims arising from Ford’s sale of an allegedly defective vehicle. Before the Court is Plaintiffs’ motion to remand. Having considered the parties’ submissions, the relevant law, and the record in this case, the Court GRANTS Plaintiffs’ motion to remand.

I. BACKGROUND

A. Factual Background

Plaintiffs are residents of Madera County, California. ECF No. 1-1, Ex. B (“Compl.”), at ¶ 2. Defendant Ford designs, manufactures, and sells automobiles, and is a Delaware corporation

1 operating in California. *Id.* at ¶ 4. Defendant Lithia sells, services, and repairs automobiles, and
2 conducts business in California. *Id.* at ¶ 5.

3 Plaintiffs allege that on or about October 24, 2012, Plaintiffs purchased a 2011 Lincoln
4 MKZ vehicle (“Vehicle”) “manufactured and or distributed by Defendant Ford.” *Id.* at ¶ 9.
5 Plaintiffs did not purchase the Vehicle from Defendant Lithia. *See Reply* at 1 n.1 (conceding that
6 “Lithia Ford did not sell the Subject Vehicle to Plaintiffs”). When Plaintiffs purchased the
7 Vehicle, Defendant Ford provided Plaintiffs with express written warranties including a “4
8 year/50,000 miles bumper to bumper warranty and a 6 year/70,000 miles powertrain warranty,
9 which covers the engine and transmission.” Compl. at ¶ 10.

10 Those warranties provided that if “a defect developed with the Vehicle during the warranty
11 period, Plaintiffs could deliver the Vehicle for repair services to Defendant’s representative and
12 the Vehicle would be repaired.” *Id.* Plaintiffs allege that during the warranty period, the Vehicle
13 developed defects related to the Vehicle’s electrical system, brakes, climate control system, seats,
14 battery, engine, and many other components of the Vehicle. *Id.* at ¶ 11. However, “Defendant
15 and its representatives in this state have been unable to service or repair the Vehicle to conform to
16 the applicable express warranties after a reasonable number of opportunities.” *Id.* at ¶ 12.

17 Plaintiffs allege that when Plaintiffs presented the Vehicle to Defendant Ford’s
18 representative, “Defendant and its representative failed to commence the service or repairs within
19 a reasonable time and failed to service or repair the Vehicle so as to conform to the applicable
20 warranties within 30 days.” *Id.* at ¶ 19.

21 As to Defendant Lithia, Plaintiffs allege that Plaintiffs “delivered the Subject Vehicle to
22 Defendant Lithia for substantial repair on at least one occasion.” *Id.* at ¶ 36. However,
23 “Defendant Lithia breached its duty to Plaintiff to use ordinary care and skill by failing to properly
24 store, prepare and repair the Subject Vehicle in accordance with industry standards.” *Id.* at ¶ 38.

25 **B. Procedural History**

26 On October 31, 2018, Plaintiffs filed their complaint against Defendants in California
27 Superior Court for the County of Santa Clara. Compl. at 1. On November 15, 2018, Plaintiffs

1 served their complaint on Defendants. ECF No. 1 at 2.

2 Plaintiffs' complaint includes six causes of action: (1) violation of California Civil Code §
3 1793.2(d) against Defendant Ford, Compl. at ¶¶ 9–17; (2) violation of California Civil Code §
4 1793.2(b) against Defendant Ford, *id.* at ¶¶ 18–22; (3) violation of California Civil Code §
5 1793.2(a)(3) against Defendant Ford, *id.* at ¶¶ 23–25; (4) breach of express written warranty in
6 violation of California Civil Code §§ 1791.2(a), 1794 against Defendant Ford, *id.* at ¶¶ 26–29; (5)
7 breach of the implied warranty of merchantability in violation of California Civil Code §§ 1791.1,
8 1794 against Defendant Ford, *id.* at ¶¶ 30–34; and (6) common law negligent repair against
9 Defendant Lithia. *Id.* at ¶¶ 35–39.

10 Plaintiffs allege that any applicable statutes of limitation are subject to "equitable tolling,
11 the discovery rule, the fraudulent concealment rules, equitable estoppel, the repair rule, and/or
12 class action tolling." *Id.* at ¶ 8.

13 On December 12, 2018, Defendants removed Plaintiff's complaint to federal court. ECF
14 No. 1. Defendants' notice of removal asserts two grounds for removal. First, Defendants state
15 that federal question jurisdiction exists because Plaintiffs bring a cause of action for violation of
16 the Magnuson-Moss Act, 15 U.S.C. § 2301, *et seq.* *Id.* at 3. Defendants state that the Court may
17 exercise supplemental jurisdiction over Plaintiffs' related state law claims. *Id.* at 4.

18 Second, Defendants' notice of removal states that the Court has diversity jurisdiction over
19 Plaintiffs' complaint. *Id.* at 5. Although Plaintiffs and Defendant Lithia are all citizens of
20 California, Defendants state that Plaintiffs fraudulently joined Defendant Lithia, such that
21 diversity jurisdiction is not defeated. *Id.* at 6.

22 On January 11, 2019, Plaintiffs filed the instant motion to remand. ECF No. 11 ("Mot.").
23 Plaintiffs also filed a concurrent request for judicial notice. ECF No. 11-5. The Court denies as
24 moot Plaintiffs' request for judicial notice, as the Court's order does not rely on the document
25 attached to Plaintiffs' request for judicial notice. On January 25, 2019, Defendants filed their
26 opposition, ECF No. 12 ("Opp."), and on February 1, 2019, Plaintiffs filed their reply. ECF No.
27 14 ("Reply").

1 **II. LEGAL STANDARD**

2 A suit may be removed from state court to federal court only if the federal court would
3 have had subject matter jurisdiction over the case. 28 U.S.C. § 1441(a); *see Caterpillar Inc. v.*
4 *Williams*, 482 U.S. 386, 392 (1987) (“Only state-court actions that originally could have been filed
5 in federal court may be removed to federal court by the defendant.”). If it appears at any time
6 before final judgment that the federal court lacks subject matter jurisdiction, the federal court must
7 remand the action to state court. 28 U.S.C. § 1447(c).

8 The party seeking removal bears the burden of establishing federal jurisdiction. *Provincial*
9 *Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009). “The removal
10 statute is strictly construed, and any doubt about the right of removal requires resolution in favor
11 of remand.” *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (citing
12 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)).

13 For federal subject matter jurisdiction to exist, a case must either involve diversity of
14 citizenship between the parties or involve a claim arising under federal law. *See Wayne v. DHL*
15 *Worldwide Express*, 294 F.3d 1179, 1183 n.2 (9th Cir. 2002). For the Court to have federal
16 question jurisdiction, the complaint must arise under federal law. 28 U.S.C. § 1331. Generally
17 speaking, “[a] cause of action arises under federal law only when the plaintiff’s well-pleaded
18 complaint raises issues of federal law.” *Hansen v. Blue Cross of Cal.*, 891 F.2d 1384, 1386 (9th
19 Cir. 1989).

20 Under 28 U.S.C. § 1332(a)(1), federal courts have diversity jurisdiction over civil actions
21 “where the matter in controversy exceeds the sum or value of \$75,000 . . . and is between . . .
22 citizens of different States.” 28 U.S.C. § 1332. The statute “applies only to cases in which the
23 citizenship of each plaintiff is diverse from the citizenship of each defendant.” *Caterpillar Inc. v.*
24 *Lewis*, 519 U.S. 61, 68 (1996).

25 **III. DISCUSSION**

26 Plaintiffs’ motion to remand argues that the Court lacks subject matter jurisdiction over
27 Plaintiffs’ complaint because both Plaintiffs and Defendant Lithia are citizens of California. Mot.

1 at 3. In opposition, Defendants argue that (1) the Court has federal question jurisdiction because
2 Plaintiffs bring a federal Magnuson-Moss Act claim; and (2) the Court has diversity jurisdiction
3 because Plaintiffs fraudulently joined Defendant Lithia. Opp. at 3, 9. The Court discusses these
4 two alleged bases for subject matter jurisdiction in turn.

5 **A. Federal Question Jurisdiction**

6 Defendants argue that federal question jurisdiction exists because Plaintiffs bring a claim
7 under the federal Magnuson-Moss Act, 15 U.S.C. § 2301. Opp. at 3–4. However, Plaintiffs'
8 complaint includes no such federal claim.

9 Plaintiffs' complaint lists six causes of action, none of which arises under the federal
10 Magnuson-Moss Act. *See* Compl. at ¶¶ 9–39. Five causes of action arise under California's
11 Song-Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1790 *et seq.*, and one is a common law
12 California tort claim for negligent repair. *Id.*

13 Nonetheless, Defendants argue that Plaintiffs' complaint includes a Magnuson-Moss Act
14 cause of action because the complaint's prayer for relief requests "any remedies pursuant to the
15 Magnuson-Moss Act." *Id.* at p.8. In addition, Plaintiffs' complaint alleges that "[t]o the extent
16 there any statutes of limitation applicable to Plaintiffs' claims—including, without limitation, the
17 express warranty, implied warranty, and Magnuson-Moss claims—the running of the limitation
18 periods have been tolled . . ." *Id.* at ¶ 8.

19 In reply, Plaintiffs expressly disclaim any reliance on the Magnuson-Moss Act that one
20 might infer from those stray references: "Plaintiffs have not alleged a Magnuson-Moss Act cause
21 of action." Reply at 1. Plaintiffs explain that "[a]ny references to the Magnuson-Moss Act in the
22 Complaint's Tolling paragraph and Prayer for Relief were typographical errors," and blame a
23 former attorney for the errors. *Id.* Defendants do not identify any other federal causes of action in
24 Plaintiffs' complaint. Thus, absent any cause of action that arises under federal law, Plaintiffs'
25 complaint does not provide a basis for federal question jurisdiction. 28 U.S.C. § 1331.

26 Defendants make much of Plaintiffs' failure to contest federal question jurisdiction in
27 Plaintiffs' motion, *see* Opp. at 3, but the Court has an independent obligation to confirm its own

1 subject matter jurisdiction and to remand a removed case to state court “[i]f at any time before
2 final judgment it appears that the district court lacks subject matter jurisdiction.” 28 U.S.C. §
3 1447(c). Here, federal question jurisdiction does not provide a basis for the Court to exercise
4 subject matter jurisdiction over Plaintiffs’ complaint.

5 **B. Diversity Jurisdiction**

6 The Court next considers whether Defendants have shown that diversity jurisdiction exists.
7 Complete diversity of parties is required: “[I]n a case with multiple plaintiffs and multiple
8 defendants, the presence in the action of a single plaintiff from the same State as a single
9 defendant deprives the district court of original diversity jurisdiction over the entire action.”
10 *Abrego v. Dow Chem. Co.*, 443 F.3d 676, 679 (9th Cir. 2006) (quoting *Exxon Mobil Corp. v.*
11 *Allapattah Servs., Inc.*, 545 U.S. 546, 553 (2005)). However, fraudulently joined defendants who
12 destroy diversity do not defeat removal. *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th
13 Cir. 1987).

14 Here, Defendants argue that Defendant Lithia was fraudulently joined to destroy diversity
15 jurisdiction, and that removal was thus proper. However, Defendants have not carried their heavy
16 burden to show that Defendant Lithia was fraudulently joined.

17 As this Court has previously explained, “[t]here is a ‘general presumption against
18 fraudulent joinder’ and the defendant’s burden of demonstrating that a joinder is fraudulent is a
19 ‘heavy’ one.” *Beutel v. Wells Fargo Bank N.A.*, 2018 WL 3084660, at *2 (N.D. Cal. Jun. 22,
20 2018) (quoting *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1046 (9th Cir. 2009)). Joinder is
21 fraudulent only when it is “obvious according to the settled rules of the state that [a plaintiff] has
22 failed to state a claim against [a joined defendant].” *Hunter*, 582 F.3d at 1046.

23 This standard imposes a very high bar on removing defendants. The Ninth Circuit has
24 repeatedly held that “if there is a *possibility* that a state court would find that the complaint states a
25 cause of action against any of the resident defendants, the federal court must find that the joinder
26 was proper and remand the case to the state court.” *Grancare, LLC v. Thrower by and through*
27 *Mills*, 889 F.3d 543, 548 (9th Cir. 2018) (emphasis in original) (citations and quotation marks

1 omitted). To resolve fraudulent joinder claims, the Court may look beyond the pleadings to
2 evidence proffered by the parties. *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1068 (9th Cir.
3 2001).

4 Here, Plaintiffs bring only a negligent repair claim against Defendant Lithia. Compl. at ¶¶
5 35–39. Thus, the question is whether it is obvious under settled California law that Plaintiffs
6 cannot state a negligent repair claim against Defendant Lithia. Defendants argue that Plaintiffs’
7 negligent repair claim against Defendant Lithia is barred by the economic loss rule and by the
8 statute of limitations. Opp. at 9. The Court considers Defendants’ arguments in turn.

9 **1. Economic Loss Rule**

10 First, Defendants contend that Plaintiffs’ negligent repair claim is barred by the economic
11 loss rule. Economic losses are “damages for inadequate value, costs of repair and replacement of
12 [a] defective product or consequent loss of profits—without any claim of personal injury or
13 damages to other property.” *Robinson Helicopter Co., Inc. v. Dana Corp.*, 34 Cal. 4th 979, 988
14 (2004). Under the economic loss rule, a plaintiff may generally only recover economic losses
15 through contract rather than through tort: “[W]here a purchaser’s expectations in a sale are
16 frustrated because the product he bought is not working properly, his remedy is said to be in
17 contract alone, for he has suffered only ‘economic’ losses.” *Jimenez v. Superior Court*, 29 Cal.
18 4th 473, 482 (2002).

19 Defendants contend that the economic loss rule applies because Plaintiffs do not allege any
20 injury to Plaintiffs or to other property, only that the Vehicle is defective. However, the economic
21 loss rule is not so absolute. For example, the California Supreme Court has held that “the
22 economic loss rule does not necessarily bar recovery in tort for damage that a defective product
23 (e.g., a window) causes to other portions of a larger product (e.g., a house) into which the former
24 has been incorporated.” *Jimenez*, 29 Cal. 4th at 483. Thus, in a recent negligent repair case also
25 involving a Ford vehicle, a district court held that where a plaintiff alleged “problems with various
26 subcomponents of the engine, including the rear driveshaft, engine compartment, and
27 turbocharger,” the economic loss rule “would not bar recovery in tort for damage that these

1 subcomponents cause to the engine as a whole or for damage that the engine caused to the Vehicle
2 in which it has been incorporated.” *Sabicer v. Ford Motor Co.*, 362 F. Supp. 3d 837, 841 (C.D.
3 Cal. 2019). Thus, the *Sabicer* court held that “Defendants have failed to prove that a customer
4 could not possibly recover against a dealership for negligent repair.” *Id.*

5 Further, numerous other federal district courts—in cases also involving Ford vehicles—
6 have held that the economic loss rule’s application to negligent repair claims is not obvious or
7 settled by California law. For example, in *Gayou v. Ford Motor Co.*, 2019 WL 132584 (C.D. Cal.
8 Mar. 25, 2019), the district court held that because of the “the lack of clarity in California law
9 regarding the tort duties arising from service contracts,” plaintiff’s claim for negligent repair
10 against a car dealership was not “impossible” under California law. *Id.* at *3; *see also Lytle v.*
11 *Ford Motor Co.*, 2018 WL 4739800, at *2 (E.D. Cal. Oct. 2, 2018) (“California law is not so
12 settled that a plaintiff could not possibly recover against a dealership for negligent repair of a
13 vehicle.”); *Tasch v. Ford Motor Co.*, 2018 WL 3956493, at *2 (C.D. Cal. Aug. 16, 2018) (finding
14 that the defendants did not prove that the plaintiff’s negligent repair claim was impossible under
15 California law).

16 Defendants cite no contrary authority. Thus, Defendants have not carried their heavy
17 burden to show that the economic loss rule renders Plaintiffs’ joinder of Defendant Lithia
18 fraudulent.

19 **2. Statute of Limitations**

20 Second, Defendants contend that the statute of limitations bars Plaintiffs’ negligent repair
21 claim against Defendant Lithia. Under California law, the statute of limitations for a negligent
22 repair claim is three years. Cal. Civ. Proc. Code § 338(c)(1) (setting forth a three-year statute of
23 limitations for “[a]n action for taking, detaining, or injuring goods or chattels, including an action
24 for the specific recovery of personal property”); *see also Sabicer*, 362 F. Supp. 3d at 842 (holding
25 that a negligent repair claim is subject to § 338’s three-year statute of limitations).

26 However, Defendants contend that the statute of limitations is two years, but Defendants
27 cite California Code of Civil Procedure § 339, which applies to breach of contract actions and not

1 negligent repair actions such as the instant case. Cal. Civ. Proc. Code § 339; *see also Sabicer*, 362
2 F. Supp. 3d at 842 (noting that § 339 “deals with causes of action based on contract, not tort”).

3 According to Defendants, Plaintiffs last visited Defendant Lithia for repairs on February
4 13, 2015, more than three years before Plaintiffs filed their October 31, 2018 complaint. Opp. at
5 12; *see also* ECF No. 12-3, Declaration of Brent Hall (“Hall Decl.”), ¶ 3 (Defendant Lithia’s
6 general manager declaring that Plaintiffs last visited Defendant Lithia for repairs on February 13,
7 2015).

8 Under California’s delayed discovery rule, the statute of limitations only begins to run
9 once the plaintiff discovers or should have discovered all facts essential to his cause of action.
10 *Camsi IV v. Hunter Tech. Corp.*, 230 Cal. App. 3d 1525, 1536 (1991) (discussing delayed
11 discovery rule and holding that statutes of limitation “should not be interpreted so as to bar a
12 victim of wrongful conduct from asserting a cause of action before he could reasonably be
13 expected to discover its existence”) (citations omitted). The fact that Plaintiffs last presented the
14 Vehicle to Defendant Lithia for repair on February 13, 2015 does not show *when* Plaintiffs
15 discovered that Defendant Lithia had allegedly failed to repair the Vehicle in accordance with
16 industry standards.

17 Here, Plaintiffs’ complaint alleges that “the discovery rule” has tolled the statute of
18 limitations applicable to Plaintiffs’ claims. Compl. at ¶ 8. Although Plaintiffs’ complaint is not
19 specific about how the delayed discovery rule applies to Plaintiff’s negligent repair claim, the
20 question at this stage is not whether Plaintiffs’ complaint states a claim against Defendant Lithia,
21 but only whether there is a “possibility” that Plaintiffs’ complaint states a claim against Defendant
22 Lithia. *See Grancare*, 889 F.3d at 549 (“A claim against a defendant may fail under Rule
23 12(b)(6), but that defendant has not necessarily been fraudulently joined.”). Defendants have cited
24 no authority that the delayed discovery rule *cannot* apply to negligent repair claims. *See Sabicer*,
25 362 F. Supp. 3d at 842 (holding that the defendants failed to prove that there is “no possibility”
26 that plaintiffs could invoke the delayed discovery rule to allege a negligent repair claim against an
27 in-state dealership).

1 In sum, Defendants have not shown that it is impossible for Plaintiffs to invoke the delayed
2 discovery rule to toll the statute of limitations on Plaintiffs' negligent repair claim. *See Vincent v.*
3 *First Republic Bank Inc.*, 2010 WL 1980223, at *3 (N.D. Cal. May 17, 2010) (holding that remand
4 was appropriate in case where defendants argued fraudulent joinder because "defendants have not
5 shown that plaintiff would not be able to amend the complaint to allege any viable claims against
6 the individual defendants under California law"). Thus, Defendants have not carried their heavy
7 burden to show that Plaintiffs' inclusion of Defendant Lithia was fraudulent.

Accordingly, because Plaintiffs and Defendant Lithia are citizens of California and because Defendants have failed to prove fraudulent joinder, the Court lacks diversity jurisdiction over the instant action, and must remand the case to state court.

3. Severance Under Rule 21

2 Alternatively, Defendants ask the Court to sever Defendant Lithia from the case under
3 Federal Rule of Civil Procedure 21, which provides that a court may *sua sponte* “at any time, on
4 just terms, add or drop a party.” Fed. R. Civ. P. 21; *see Sams v. Beech Aircraft*, 625 F.2d 273, 277
5 (9th Cir. 1980) (holding that Rule 21 “grants a federal district or appellate court the discretionary
6 power to perfect its diversity jurisdiction by dropping a nondiverse party provided the nondiverse
7 party is not indispensable to the action under Rule 19”).

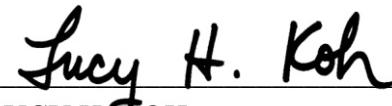
18 However, the Court declines to exercise its discretion to sever Defendant Lithia. Plaintiffs'
19 claims against Defendant Ford and Defendant Lithia arise from the same series of transactions or
20 occurrences. For example, Plaintiffs' claim against Defendant Lithia involves the same Vehicle
21 and some of the same defects in that Vehicle as Plaintiffs' claims against Defendant Ford, such
22 that judicial efficiency weighs against severing Defendant Lithia. Moreover, the Court has already
23 concluded that removal was not warranted because the Court lacks federal question jurisdiction or
24 diversity jurisdiction. To sever Defendant Lithia for the Court to exercise diversity jurisdiction
25 would contradict the Ninth Circuit's instruction that "[t]he removal statute is strictly construed,
26 and any doubt about the right of removal requires resolution in favor of remand." *Moore-Thomas*,
27 553 F.3d at 1244. Thus, the Court declines to sever Defendant Lithia under Rule 21.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court GRANTS Plaintiffs' motion to remand and
3 REMANDS the instant case to California Superior Court for the County of Santa Clara. The
4 Clerk shall close the file.

5 **IT IS SO ORDERED.**

6 Dated: June 5, 2019

7 
8 LUCY H. KOH
9 United States District Judge